

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:BR:3:JMMoran
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Third Party Communication: None
Date of Communication: Not Applicable

UILC: 6330.00-00; 6331.00-00

date: November 28, 2008

to: Mark J. Louie
Program Analyst
(SBSE Field Operations, Reviews, & Enforcement SE:S:C:CP:FORE)

from: Pamela Wilson Fuller
Chief, Branch 3
(Procedure & Administration)

subject: Revenue Officer Signature on Levies and Notices of Levy

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

(1) Whether a Revenue Officer must sign a levy, a notice of intent to levy, a notice of a right to a Collection Due Process (CDP) hearing, or a notice that a levy has been released?

(2) Whether an electronic signature entered on the collection documents described above Revenue Officer is effective?

(3) Whether a facsimile of a Revenue Officer's signature stamped by Group Secretary on the collection documents described above is effective?

CONCLUSIONS

(1) No, but the collection documents must be executed by a person acting under the authority of the Secretary of Treasury and a signature is the common means of showing who is acting for the Service.

(2) Yes. An electronic signature entered by a Revenue Officer is effective to show a collection document is properly authorized.

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(3) Yes. A facsimile of a Revenue Officer's signature stamped by Group Secretary may be effective to show a collection document is properly authorized.

DISCUSSION

Section 6331(a) of the Internal Revenue Code authorizes the Secretary of the Treasury to collect tax by levy. A levy is served on Form 668-A, *Notice of Levy*, or Form 668-W, *Notice of Levy on Wages, Salary, and Other Income*. Section 6331(d) requires the Secretary to provide notice of the intent to levy before collecting by levy as provided in section 6331(a). The notice must contain certain information (specified in section 6331(d)(4)), but there is no requirement that it be signed.¹ Section 6330(a)(1) provides no levy may be made unless the Secretary has given notification of the right to a Collection Due Process (CDP) hearing. The CDP notice must contain information (specified in section 6330(a)(3)), but there is no requirement that it be signed. In practice, the section 6331(d) and the section 6330(a)(1) notification is given for cases assigned to a Revenue Officer by Letter 1058, *Final Notice, Notice of Intent to Levy and Notice of Your Right to a Hearing*. Section 6343(a)(1) provides that the Secretary shall release the levy in certain specified circumstances and shall promptly notify the person upon whom such levy was made that such levy has been released. There is no requirement that the notice be signed. The notification is provided on Form 668-D, *Release of Levy/Release of Property from Levy*, to release a levy.²

The collection documents issued for purposes of sections 6331(a), 6331(d) and 6330(a)(1) must be executed by a person acting under a proper delegation of authority from the Secretary. Section 7701(a)(11)(B) defines "Secretary" to include the Secretary's delegate. Treas. Reg. § 301.6331-1 authorizes district directors to levy and Treas. Reg. § 301.6331-2 directs the district director to provide notice of intent to levy. Treas. Reg. § 301.6343-1 directs a district director, service center director, or compliance center director (director) to promptly notify the person upon whom the levy was made of a release. The title of district director has been eliminated, but the

¹ Biegeleisen v. Ross, 158 F.3d 59 (2d. Cir. 1998) appears to indicate a signature is required on a notice of levy; but that per curiam opinion only addressed a due process claim under the Constitution and not the requirements of section 6331(d); it simply held that the use of a stamp instead of an original signature does not violate due process. Biegeleisen's argument under the Code regarding the signature was that section 6065 required the revenue officer sign a notice under penalties of perjury. The court found no such requirement in a summary order issued on the same date as the per curiam opinion. See Biegeleisen v. Ross, 164 F.3d 617 (2d. Cir. 1998).

² Your request also mentions Form 668-C, *Final Demand for Payment*, and Letter 3174, *New Warning of Enforcement*, which are not required by the Code or regulations. Form 668-C is a follow-up notice sent after a levy is served on a third party (on a Form 668-A or a Form 668-W) and there is no response or a refusal to comply. Letter 3174 was created because it has been administratively determined that a taxpayer will be given a new warning of enforcement action if there has been no other enforcement action or warning of enforcement for at least 180 days. If the taxpayer cannot be contacted in person or by telephone, then the warning may be given in writing using Letter 3174.

functional equivalent may exercise the authority provided in the regulations. See United States v. Thomas, --- F.Supp.2d ---, 2008 WL 4307193 (D.Me. Sept. 22, 2008) at footnote 10. Treas. Reg. § 301.6330-1(a) provides that the Commissioner, or his or her delegate will prescribe procedures to provide persons upon whose property or rights to property the IRS intends to levy, notice of that intention. The collection authority has been further delegated by delegation orders; for example, Delegation Order 5-3, *Levy on Property in the Hands of a Third Party* (Nov. 8, 2007) lists scenarios for issuing notices of levy and provides who has the authority and whether it may be redelegated. See Exhibit 1.2.2-1, Delegation Orders by Process (08-01-2008) at IRM 1.2.44, *The Collecting Process*.

Although a signature is not required on the collection documents, if the authority to execute the document is questioned by a taxpayer, a signature can prove that a properly authorized person carried out the act by identifying the person exercising the authority. An electronic signature entered by a Revenue Officer may serve this purpose. The Code does not define the term “signature.” At common law, the critical element of authentication is the signer's act of adopting the document being “signed.” Any signature method that reliably authenticates a document may be used. Reliability depends on the circumstances. In general, the greater the risk of repudiation by the signor, the more reliable (i.e., elaborate) the signature must be; however, it seems that repudiate by a revenue officer is unlikely. The determination of the level of reliability to be provided by a signature is a business decision. The evaluation of how well a particular electronic signature method will do in providing the appropriate level of reliability is a business decision; e.g., how easy is it to provide proof of proper use of the signature relative to the number of challenges.³

A secretary may be authorized to stamp a signature on behalf of a Revenue Officer. The procedure describing the stamping process must be documented and must show that a collection document will be executed by the Revenue Officer with only clerical assistance from the secretary. The documentation must be retained as part of the recorded information an organization needs to do business in accordance with IRM 1.15, *Records Management*.⁴

³ The office of Electronic Tax Administration has experience with electronic signature methods that you might find useful. The contact for that office is Kevin Hatton, Manager, Policy & Standards Branch, Electronic Tax Administration at 202-283-7877. Also, note that an electronic signature is being used by the official who approves a lien release under the Automated Lien System. See IRM 5.12.3.4, *Requests for Release of Lien* (09-07-2006).

⁴ When establishing a stamping procedure, you may wish to consider Rev. Proc. 2005-39, 2005-28 I.R.B. 82, 2005-2 C.B. 82. The procedure addressed in Rev. Proc. 2005-39 allows a corporate officer to sign certain employment tax related documents using an alternative signature method (i.e., a facsimile signature created by rubber stamp, mechanical device, or computer software program). The corporate officer is personally responsible for ensuring that the facsimile signature is affixed to the document. The person filing the document must retain a letter signed by the corporate officer declaring that (1) the facsimile signature is the signature adopted by the officer and (2) it was affixed to the document at the officer's direction. The letter must list each document by name and identifying number.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call John Moran at (202) 622-3600 if you have any further questions.